

HOUSE BILL No. 5383

March 4, 2014, Introduced by Reps. Lauwers, Cotter, Kurtz, Lori, Daley, Victory, Callton, Johnson, LaFontaine, Rutledge, Clemente, LaVoy, Schor, Muxlow and Rendon and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 1 of chapter III, section 6b of chapter V, and section 22 of chapter VIII (MCL 763.1, 765.6b, and 768.22), section 6b of chapter V as amended by 2013 PA 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER III

Sec. 1. On the trial of every indictment or other criminal accusation, the party accused shall be allowed to be heard by counsel and may defend himself **OR HERSELF**, and he ~~shall have~~**OR SHE HAS** a right to produce witnesses and proofs in his **OR HER** favor, and meet the witnesses who are produced against him ~~face to face~~**OR HER. NOTHING IN THIS SECTION PROHIBITS THE USE OF VIDEO COMMUNICATION EQUIPMENT AS AUTHORIZED UNDER THIS ACT.**

CHAPTER V

1
2 Sec. 6b. (1) A judge or district court magistrate may release
3 ~~under this section~~ a defendant **UNDER THIS SUBSECTION** subject to
4 conditions reasonably necessary for the protection of 1 or more
5 named persons. If a judge or district court magistrate releases
6 ~~under this section~~ a defendant **UNDER THIS SUBSECTION** subject to
7 protective conditions, the judge or district court magistrate shall
8 make a finding of the need for protective conditions and inform the
9 defendant on the record, either orally or by a writing that is
10 personally delivered to the defendant, of the specific conditions
11 imposed and that if the defendant violates a condition of release,
12 he or she will be subject to arrest without a warrant and may have
13 his or her bail forfeited or revoked and new conditions of release
14 imposed, in addition to the penalty provided under section 3f of
15 chapter XI and any other penalties that may be imposed if the
16 defendant is found in contempt of court.

17 (2) An order or amended order issued under subsection (1)
18 shall contain all of the following:

19 (a) A statement of the defendant's full name.

20 (b) A statement of the defendant's height, weight, race, sex,
21 date of birth, hair color, eye color, and any other identifying
22 information the judge or district court magistrate considers
23 appropriate.

24 (c) A statement of the date the conditions become effective.

25 (d) A statement of the date on which the order will expire.

26 (e) A statement of the conditions imposed.

27 (3) An order or amended order issued under this subsection and

1 subsection (1) may impose a condition that the defendant not
2 purchase or possess a firearm. However, if the court orders the
3 defendant to carry or wear an electronic monitoring device as a
4 condition of release as described in subsection (6), the court
5 shall also impose a condition that the defendant not purchase or
6 possess a firearm.

7 (4) The judge or district court magistrate shall immediately
8 direct a law enforcement agency within the jurisdiction of the
9 court, in writing, to enter an order or amended order issued under
10 subsection (1) or subsections (1) and (3) into ~~the law enforcement~~
11 ~~information network as provided by the C.J.I.S. policy council act,~~
12 ~~1974 PA 163, MCL 28.211 to 28.215.~~ **LEIN**. If the order or amended
13 order is rescinded, the judge or district court magistrate shall
14 immediately order the law enforcement agency to remove the order or
15 amended order from ~~the law enforcement information network.~~ **LEIN**.

16 (5) A law enforcement agency within the jurisdiction of the
17 court shall immediately enter an order or amended order into ~~the~~
18 ~~law enforcement information network as provided by the C.J.I.S.~~
19 ~~policy council act, 1974 PA 163, MCL 28.211 to 28.215,~~ **LEIN** or
20 shall remove the order or amended order from the law enforcement
21 information network upon expiration of the order or as directed by
22 the court under subsection (4).

23 (6) If a defendant who is charged with a crime involving
24 domestic violence, or any other assaultive crime, is released under
25 this ~~section,~~ **SUBSECTION AND SUBSECTION (1)**, the judge or district
26 court magistrate may order the defendant to wear an electronic
27 monitoring device as a condition of release. With the informed

1 consent of the victim, the court may also order the defendant to
2 provide the victim of the charged crime with an electronic receptor
3 device capable of receiving the global positioning system
4 information from the electronic monitoring device worn by the
5 defendant that notifies the victim if the defendant is located
6 within a proximity to the victim as determined by the judge or
7 district court magistrate in consultation with the victim. The
8 victim shall also be furnished with a telephone contact with the
9 local law enforcement agency to request immediate assistance if the
10 defendant is located within that proximity to the victim. In
11 addition, the victim may provide the court with a list of areas
12 from which he or she would like the defendant excluded. The court
13 shall consider the victim's request and shall determine which areas
14 the defendant shall be prohibited from accessing. The court shall
15 instruct the entity monitoring the defendant's position to notify
16 the proper authorities if the defendant violates the order. In
17 determining whether to order a defendant to wear an electronic
18 monitoring device, the court shall consider the likelihood that the
19 defendant's participation in electronic monitoring will deter the
20 defendant from seeking to kill, physically injure, stalk, or
21 otherwise threaten the victim prior to trial. The victim may
22 request the court to terminate the victim's participation in the
23 monitoring of the defendant at any time. The court shall not impose
24 sanctions on the victim for refusing to participate in monitoring
25 under this subsection. A defendant described in this subsection
26 shall only be released ~~under this section~~ if he or she agrees to
27 pay the cost of the device and any monitoring as a condition of

1 release or to perform community service work in lieu of paying that
2 cost. An electronic monitoring device ordered to be worn under this
3 ~~section~~**SUBSECTION** shall provide reliable notification of removal
4 or tampering. As used in this subsection:

5 (a) "Assaultive crime" means that term as defined in section
6 9a of chapter X.

7 (b) "Domestic violence" means that term as defined in section
8 1 of 1978 PA 389, MCL 400.1501.

9 (c) "Electronic monitoring device" includes any electronic
10 device or instrument that is used to track the location of an
11 individual, but does not include any technology that is implanted
12 or violates the corporeal body of the individual.

13 (d) "Informed consent" means that the victim was given
14 information concerning all of the following before consenting to
15 participate in electronic monitoring:

16 (i) The victim's right to refuse to participate in that
17 monitoring and the process for requesting the court to terminate
18 the victim's participation after it has been ordered.

19 (ii) The manner in which the monitoring technology functions
20 and the risks and limitations of that technology, and the extent to
21 which the system will track and record the victim's location and
22 movements.

23 (iii) The boundaries imposed on the defendant during the
24 monitoring program.

25 (iv) Sanctions that the court may impose on the defendant for
26 violating an order issued under this subsection.

27 (v) The procedure that the victim is to follow if the

1 defendant violates an order issued under this subsection or if
2 monitoring equipment fails to operate properly.

3 (vi) Identification of support services available to assist the
4 victim to develop a safety plan to use if the court's order issued
5 under this subsection is violated or if the monitoring equipment
6 fails to operate properly.

7 (vii) Identification of community services available to assist
8 the victim in obtaining shelter, counseling, education, child care,
9 legal representation, and other help in addressing the consequences
10 and effects of domestic violence.

11 (viii) The nonconfidential nature of the victim's communications
12 with the court concerning electronic monitoring and the
13 restrictions to be imposed upon the defendant's movements.

14 (7) A JUDGE OR DISTRICT COURT MAGISTRATE MAY RELEASE UNDER
15 THIS SUBSECTION A DEFENDANT SUBJECT TO CONDITIONS REASONABLY
16 NECESSARY FOR THE PROTECTION OF THE PUBLIC IF THE DEFENDANT HAS
17 SUBMITTED TO A PRELIMINARY CHEMICAL TEST AND THAT TEST REVEALS THE
18 PRESENCE OF A CONTROLLED SUBSTANCE. THE JUDGE OR DISTRICT COURT
19 MAGISTRATE SHALL INFORM THE DEFENDANT ON THE RECORD, EITHER ORALLY
20 OR BY A WRITING THAT IS PERSONALLY DELIVERED TO THE DEFENDANT, OF
21 ALL OF THE FOLLOWING:

22 (A) THAT IF THE DEFENDANT IS RELEASED UNDER THIS SUBSECTION,
23 HE OR SHE SHALL NOT OPERATE A MOTOR VEHICLE UNDER THE INFLUENCE OF
24 ALCOHOLIC LIQUOR OR OF A CONTROLLED SUBSTANCE AS A CONDITION OF
25 RELEASE.

26 (B) THAT IF THE DEFENDANT VIOLATES THE CONDITION OF RELEASE
27 UNDER SUBDIVISION (A), HE OR SHE WILL BE SUBJECT TO ARREST WITHOUT

1 A WARRANT, SHALL HAVE HIS OR HER BAIL FORFEITED OR REVOKED, AND
2 SHALL NOT BE RELEASED FROM CUSTODY PRIOR TO TRIAL.

3 (8) THE JUDGE OR DISTRICT COURT MAGISTRATE SHALL IMMEDIATELY
4 DIRECT A LAW ENFORCEMENT AGENCY WITHIN THE JURISDICTION OF THE
5 COURT, IN WRITING, TO ENTER AN ORDER OR AMENDED ORDER ISSUED UNDER
6 SUBSECTION (7) INTO LEIN.

7 (9) A LAW ENFORCEMENT AGENCY WITHIN THE JURISDICTION OF THE
8 COURT SHALL IMMEDIATELY ENTER AN ORDER OR AMENDED ORDER INTO LEIN.
9 IF THE ORDER OR AMENDED ORDER IS RESCINDED, THE JUDGE OR DISTRICT
10 COURT MAGISTRATE SHALL IMMEDIATELY ORDER THE LAW ENFORCEMENT AGENCY
11 TO REMOVE THE ORDER OR AMENDED ORDER FROM LEIN UPON EXPIRATION OF
12 THE ORDER AS DIRECTED BY THE COURT UNDER SUBSECTION (8).

13 (10) ~~(7)~~ This section does not limit the authority of judges
14 or district court magistrates to impose protective or other release
15 conditions under other applicable statutes or court rules,
16 including ordering a defendant to wear an electronic monitoring
17 device.

18 (11) AS USED IN THIS SECTION, "LEIN" MEANS THE LAW ENFORCEMENT
19 INFORMATION NETWORK REGULATED UNDER THE C.J.I.S. POLICY ACT, 1974
20 PA 163, MCL 28.211 TO 28.215, OR BY THE DEPARTMENT OF STATE POLICE.

21 CHAPTER VIII

22 Sec. 22. (1) ~~The~~ **ALL APPLICABLE** rules of evidence in civil
23 actions ~~, insofar as the same are applicable,~~ shall govern in all
24 criminal and quasi-criminal proceedings, except as otherwise
25 provided by law.

26 (2) In ~~prosecutions~~ **A PROSECUTION** charging a second or
27 subsequent offense under ~~Act No. 300 of the Public Acts of 1949,~~ as

1 amended, being sections 257.1 to 257.923 of the Compiled Laws of
2 1948, **THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1 TO 257.923,**
3 a certification by a judge or clerk of a court under the seal of
4 the court of a prior conviction for the same offense is admissible
5 and is prima facie evidence of the fact of conviction. The
6 certification shall include the person's full name, address, date
7 of birth, operator's or chauffeur's license number and vehicle
8 registration number, if ~~such~~ **THAT** information is available to the
9 person so certifying, and the dates of the offense and the
10 conviction thereof.

11 **(3) IN A PROSECUTION CHARGING A VIOLATION OF SECTION 625 OR**
12 **625M OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.625 AND**
13 **257.625M, THE COURT MAY ALLOW AN EXPERT WITNESS TO BE SWORN AND**
14 **TESTIFY CONCERNING CHEMICAL TESTING AND CUSTODY OF EVIDENCE BY**
15 **VIDEO COMMUNICATION EQUIPMENT THAT PERMITS ALL THE INDIVIDUALS**
16 **APPEARING OR PARTICIPATING TO HEAR AND SPEAK TO EACH OTHER IN THE**
17 **COURT, CHAMBERS, OR OTHER SUITABLE PLACE. A VERBATIM RECORD OF THE**
18 **TESTIMONY SHALL BE TAKEN IN THE SAME MANNER AS FOR OTHER TESTIMONY.**

19 Enacting section 1. This amendatory act does not take effect
20 unless Senate Bill No. ____ or House Bill No. 5385 (request no.
21 03522'13) of the 97th Legislature is enacted into law.